

EASTERN DISTRICT OF PENNSYLVANIA (PHILADELPHIA)

RICARDO OVED, et al.

v.

ABC CAPITAL INVESTMENTS, LLC,
et al.

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No.: 22-4345

ORDER

AND NOW, this ____ day of _____ 2023, upon consideration of Plaintiffs' Motion for Extension of Time to Perfect Service, and any response thereto, it is hereby

ORDERED and **DECREED** that Plaintiffs' Motion is **GRANTED**.

It is further **ORDERED** and **DECREED** that Plaintiffs shall have an additional sixty (60) days to effectuate service on all Defendants.

BY THE COURT:

CHAD F. KENNEY, JUDGE

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PLAINTIFFS' MOTION FOR EXTENSION OF TIME TO PERFECT SERVICE

Plaintiffs, Ricardo Oved, Delta Fund 1 Philly LLC, and Fund Delta 1 BAL LLC, by and through their undersigned counsel, hereby bring this Motion for Extension of Time to Perfect Service, as follows:

1. Plaintiffs initiated this matter on or about October 31, 2022 asserting claims sounding in the RICO Act, breach of contract, and fraud against a variety of businesses and individuals that operate a real estate investment, ponzi scheme. *See* ECF Doc. 1.
2. Undersigned Counsel represented the plaintiffs in the action known as *Michan-Levy, et al. v. ABC Capital Investments, LLC, et al.*, Eastern District of Pennsylvania No. 21-01917; which involved the substantially same defendants who were represented by Attorney Andrew Swain. This matter concluded on August 17, 2022.
3. Attorney Andrew Swain represents substantially the same defendants in *American Hypnotherapy Society, LLC, et al v. ABC Capital Investments, LLC, et al.*, Eastern District of Pennsylvania No. 19-06116. This matter is currently in suspense as of November 16, 2022.
4. Undersigned Counsel understands that Attorney Andrew Swain's representation of the ABC Defendants is ongoing, which is evidenced further by the recent bankruptcy suggestions.

5. As such, on October 31, 2022 – the day of the initiation of this action – Undersigned Counsel provided a copy of the Complaint with a EDPA Request for Waiver of Service. *See* Exhibit A.

6. Starting in November 2022, Counsel for Plaintiffs began attempts on defendants at all known locations, which is problematic given that Defendant-Entities have failed to update their corporate registrations for their current addresses.

7. On January 17, 2023, Plaintiffs filed a Notice of *Partial* Voluntary Dismissal as to five defendants.

8. As of January 30, 2022, Counsel for Plaintiffs have received communication from Guaranteed Subpoena Service that it effectuated service on a substantial number of defendants in or about late January 2023 in a related case, specifically, *Orrico v. ABC Capital Investments, LLC, et al.*, Eastern District of Pennsylvania No. 22-3960. However, Counsel for Plaintiffs have not received the affidavits of service from Guaranteed Subpoena Service yet.

9. With the newly-discovered addresses, Guaranteed Subpoena Service is currently attempting personal service on defendants.

10. While Rule 4(m) requires a plaintiff to effectuate service within ninety (90) days, this Honorable Court is empowered to extend the time for service for good cause. Fed. R. Civ. P. 4(m).

11. “In applying this standard, the Third Circuit has equated “good cause” with the concept of “excusable neglect” of Federal Rule of Civil Procedure 6(b)(2).” *Gonzalez v. Thomas Built Buses, Inc.*, 268 F.R.D. 521, 526 (M.D. Pa. 2010) (*citing MCI Telecommunications Corp. v. Teleconcepts, Inc.*, 71 F.3d 1086, 1097 (3d Cir. 1995)). This standard requires “a demonstration

of good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified in the rules.” *Id.*

12. Plaintiffs respectfully request this Honorable Court extend the time to effectuate service as Plaintiffs demonstrated good faith attempt to obtain service by immediately providing a copy of the complaint to Defendants’ Counsel and requesting waiver of service; and then beginning attempts at service within 30 days thereafter. Such attempts are ongoing steadfastly.

13. As the ninety days expires on January 30, 2023, this Motion is timely.

WHEREFORE, Plaintiffs, by and through their undersigned counsel, hereby respectfully requests this Honorable Court grant Plaintiffs’ Motion and enter Plaintiffs’ proposed Order.

Respectfully Submitted,

WEISBERG LAW

/s/ L. Anthony DiJiacomo, III

Matthew B. Weisberg

L. Anthony DiJiacomo, III

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I, L. Anthony DiJiacomo, III, Esquire, hereby certify that on this 30th day of January 2023, a true and correct copy of the foregoing Motion was served via regular mail on all unrepresented parties at their last known addresses.

WEISBERG LAW

/s/ L. Anthony DiJiacomo, III

Matthew B. Weisberg

L. Anthony DiJiacomo, III

Attorneys for Plaintiffs